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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL LEE HUGHES,

Defendant and Appellant.

F057641

(Super. Ct. No. 08CM2071)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Kathleen A. McKenna and Leslie W. Westmoreland, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Dawson, J. and Kane, J.

A jury convicted appellant Samuel, Lee Hughes, of cultivation of marijuana (count 1/Health & Saf. Code, § 11358) and possession for sale of marijuana (count 2/Health & Saf. Code, § 11359). In a separate proceeding, Hughes admitted a prior prison term enhancement (Pen. Code, § 667.5, subd. (b)).¹

On April 30, 2009, the trial court sentenced Hughes to an aggregate term of four years eight months -- the aggravated term of three years on his cultivation conviction, an eight-month term on his possession conviction, a one-year prior prison term enhancement, and a stayed two-year term on the on-bail enhancement.

On appeal, Hughes contends the trial court violated the ban against multiple punishment when it imposed a consecutive eight-month term on his possession for sale of marijuana conviction. We will affirm.

FACTS

On September 4, 2008, Kings County Narcotics Task Force Investigator David Dodd and another officer hiked to the location of a marijuana garden near Highway 43 and Cairo Avenue in Kings County. In one area of the garden, the officers found 15 to 20 flowering marijuana plants that appeared to be four to five months old. Hughes's travel trailer was located a short distance away but was not visible from the garden. The officers left but Dodd returned on September 9, 2008, with another officer to set up motion-activated cameras at the site.

On September 19, 2008, agents arrived at the marijuana garden and arrested Hughes after they found him trimming marijuana plants. During an in-custody interview, Hughes stated he was in the garden because a few days earlier he had seen several people going in and out of the garden; he was curious to see what they were doing; and he wanted to get some "bud." Hughes denied having anything illegal in his trailer and consented to a search.

¹Unless otherwise indicated, all further statutory references are to the Penal Code.

Dodd found 33 fully developed plants in the garden, along with several buckets and other items relating to cultivation of marijuana. He seized over three pounds of marijuana from the growing area, including marijuana that he took directly from the plants growing there and some found in two buckets. Investigator Dodd testified as an expert that the marijuana found at the site and in the trailer were possessed for sale.

Corcoran Police Officer Laura Duran searched Hughes's trailer. Upon entering the trailer she noticed a strong odor of marijuana. Inside she found marijuana and marijuana seeds in various locations including on a cutting board, in various containers, and curing in coffee jars. Duran found approximately 90 grams of marijuana in the trailer that was ready for smoking. Duran testified as an expert that the marijuana in and around the trailer and the surrounding area was being cultivated, processed and sold.

DISCUSSION

Hughes contends that his cultivation and possession for sale offenses arose out of the same course of conduct and that he harbored the same intent and objective in committing these offenses. Thus, according to Hughes, the trial court violated section 654's ban against multiple punishment when it sentenced him to a consecutive term on his possession for sale of marijuana conviction. We disagree.

Section 654, subdivision (a), provides, in part:

“An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

“This statute bars multiple punishment not only for a single criminal act but for a single indivisible course of conduct in which the defendant had only one criminal intent or objective. [Citations.] We review under the substantial-evidence standard the court's factual finding, implicit or explicit, of whether there was a single criminal act or a course of conduct with a single criminal objective. [Citations.] As always, we review the trial

court's conclusions of law de novo. [Citation.]" (*People v. Moseley* (2008) 164 Cal.App.4th 1598, 1603.)

In *People v. Goodall* (1982) 131 Cal.App.3d 129 (*Goodall*), sheriff's deputies searched a van and found chemicals used to manufacture PCP. A search of an apartment and garage yielded two bottles containing one and a half gallons of PCP and various chemicals and equipment used to manufacture PCP. Four defendants were convicted of possession of piperidine and cyclohexanone with the intent to manufacture PCP (count I), possession for sale of PCP (count II), and manufacture of PCP (count III). (*Id.* at pp. 135-136.)

Two of the defendants were sentenced to the aggravated term of five years on count I and consecutive one and one-third years on each of the remaining three counts. A third defendant was sentenced to the low term of three years on count I and concurrent terms on the remaining two counts. (*Goodall, supra*, 131 Cal.App.3d at p. 146, fn. 6.) On appeal, these three defendants contended that the imposition of consecutive or concurrent sentences on counts I and III violated section 654's proscription against multiple punishment.

After rejecting a claim that count I should be dismissed because possession of the chemicals to manufacture was a lesser included offense of manufacturing PCP, the trial court stated:

"Moreover, there is another reason why count I should not be treated as an included offense of count III for purposes of ... section 654. It is well established that a drug seller who sells only part of his inventory may be convicted and punished separately for the sale of part and the possession for sale of the remainder. [Citations.] In this case the record supports the conclusion that appellants had manufactured PCP and that they were in possession of additional piperidine and cyclohexanone with intent to manufacture still more PCP. By analogy to the drug seller cases, it was proper to convict appellants on both counts.

"The same analogy also supports separate punishment on all three counts. As interpreted by the courts, ... section 654 precludes multiple

punishment where several crimes are committed during an indivisible course of conduct with a single criminal objective. Multiple punishment is permissible if the defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other. The focus of the inquiry is the defendant's intent and objective. [Citations.]

“In this case the trial court could reasonably conclude that appellants intended (1) to manufacture PCP; (2) to sell the PCP they had manufactured, if they could find a buyer; and (3) to manufacture more PCP with the ingredients not used up in step (1). *The manufacturing and selling elements in this process clearly involve separate objectives. It would not be proper to subsume the manufacturing into the selling as merely incidental to a single objective of selling the ultimate product for profit.* (See *People v. Perez* [(1979)] 23 Cal.3d [545,] 552-553 [multiple sex offenses not merely incidental to single objective of obtaining sexual gratification; multiple thefts not merely incidental to single objective of obtaining wealth].)” (*Goodall, supra*, 131 Cal.App.3d at pp. 147-148, italics added.)

Cultivation of marijuana and possession of marijuana for sale are analogous to the manufacture of PCP and the possession of PCP for sale. Here, officers found 33 plants in the marijuana garden and over 90 grams of marijuana inside of Hughes's trailer. In accord with *Goodall*, we conclude that the record supports the trial court's implied finding that Hughes entertained separate intents in cultivating the marijuana and in possessing the marijuana for sale.

Hughes contends that section 654's proscription against multiple punishment applies to his convictions because his possession for sale conviction was based in part on his possession of the three pounds of marijuana that were found in the garden. We disagree.

“[T]he purpose of section 654 ‘is to insure that a defendant's punishment will be commensurate with his culpability.’ [Citation.]” (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211.) Thus, even if Hughes's possession for sale conviction was based, in part, on the marijuana found in the marijuana garden, his possession for sale of the marijuana found in his trailer justified the additional punishment for this offense. Accordingly we

conclude that Hughes's sentence did not violate section 654's proscription against multiple punishment.

DISPOSITION

The judgment is affirmed.